# Miskolc Journal of International Law

MISKOLCI NEMZETKÖZI JOGI KÖZLEMÉNYEK

VOLUME 6. (2009) NO. 1. PP. 24-34.



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## Corporate responsibility for human rights: Analyzing the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

### I. INTRODUCTION

Globalization has in last decades assumed a prominent position in the international trade and in contemporary societies worldwide. In this way, it has stirred a number of positive and negative developments in national and international environments. Globalization has been characterized by the rise of the economic, social and political power of corporations. These corporations, particularly transnational corporations ("TNCs"), appear to have benefited the most from the changed and interconnected world. When an individual's human rights have been violated by, or involving, corporations, she should have access to a court or quasi-judicial mechanism at the international level to enforce responsibility of the perpetrator and to remedy her violations. The present article discusses and critically analyses the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy of the International Labour Organization (ILO) and potential access of the victims to this quasi-judicial international regime.

Since the 1970s a number of attempts have been made to adopt comprehensive legal and binding documents regulating corporate activities. The international community began its humble attempts to regulate corporations, particularly transnational corporations, with the emergence of the new international economic order and after the process of decolonization. At that time, the United Nations established a Commission on Transnational Corporations ("UNCTC")[2], responsible for enacting binding regulations on corporations, stating that "transnational corporation shall respect human rights and fundamental freedom in the countries where they operate."[3] It noted that corporations should respect human rights of individuals. The United

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[2] E.S.C. Res. 1913 (LVII), 1, U.N. Doc. E/RES/1913(LVII) (5 December 1974), available at http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/622/40/IMG/NR062240.pdf.
[3] U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Transnational Corp. [CTC], Draft Code of Conduct on Transnational Corporations, 7, U.N. Doc. E/1990/94/Annex (1990), quoted in Daniel Aguirre, Corporate Social Responsibility and Human Rights Law in Africa, 5 African Human Rights Law Journal 239, 249 (2005).

Nations Centre on Transnational Corporations issued draft proposals in 1978,[4] 1983,[5] 1988[6] and 1990.[7] None of these approaches was, however, formally adopted and the voluntary approaches to corporate responsibility consequently assumed priority.[8]

Corporations account for 45 of the 100 largest economies in the world, and 91 of the 150 largest economies.[9] It appears that the precise scale of human rights violations by or involving corporations remains difficult to ascertain. In this regard, the UN Special Representative of the Secretary-General on the Issue of Human Rights of Transnational Corporations and Other Business Enterprises ("SRSG") found that the extractive sector—oil, gas and mining—dominates the account of reported abuses with two thirds of the total.[10] The International Council on Mining and Metals notes 38 allegations against mining companies in 25 countries. The Office of the UN High Commissioner for Human Rights reports more than 300 allegations of corporate human rights abuses from all industry.[11] The J. Ruggie Report observes that approximately 60 percent of reported cases accounts for direct forms of company involvement in the alleged violations, meaning that the company has allegedly committed violations through its own acts or omissions.

Following this introduction, the bulk of this article discusses and analyses the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the Tripartite Declaration on Fundamental Principles and Rights at Work (1998), both of the International Labour Organization (ILO). On the basis of this analysis the conclusion discusses whether existing international extrajudicial mechanisms under the International Labour

[4] ECOSOC, CTC, Intergovernmental Working Group on a Code of Conduct, Transnational Corporations: Codes of Conduct: Formulations by the Chairman, U.N. Doc. E/C10/AC.2/8 (13 December 1978).
[5] ECOSOC, CTC, Draft Code of Conduct on Transnational Corporations, U.N. Doc. E/1983/17/Rev.1 (1983), reprinted in 23 I.L.M. 626 (1984).
[6] ECOSOC, CTC, Draft Code of Conduct on Transnational Corporations, U.N. Doc. E/1988/39/Add.1 (1988).
[7] ECOSOC, CTC, Draft Code of Conduct on Transnational Corporations, U.N. Doc. E/1990/94/Annex (1990).
[8] For a general overview see Peter T. Muchlinski, Attempts to Extend the Accountability of Transnational Corporations: The Role of UNCTAD, in Liability of Multinational Corporations under International Law 97 (Menno T. Kamminga & Saman Zia-Zarifi, eds., 2000); Nicola Jägers, Corporate Human Rights Obligations: in search of accountability 119-124 (2002).
[9] Compare World's Largest Corporations (Global 500), Fortune, 21 July 2008, at 165, available at http://money.cnn.com/magazines/fortune/global500/2008/full_list/, with World Bank, World Development Indicators: Gross Domestic Product 2007,
http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf (last visited 15 January 2009). Also, see generally, Rhett A. Butler, Corporations Agree to Cut Carbon Emissions, 20 February 2006, http://news.mongabay.com/2007/0220-roundtable.html (stating that corporations now make up roughly two-thirds of the world's 150 largest economies) (last visited 15 January 2009); SARAH ANDERSON & JOHN CAVANAGH, INST. FOR POLICY STUDIES, TOP 200: RISE OF CORPORATE GLOBAL POWER i, tbl.2 (2000), http://corpwatch.org/downloads/top200.pdf (calculating that in 1999, "[o]f the 100 largest economies in the world, 51 are corporations) (last visited 15 January 2009).
[10] SRSG, Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights of Transnational Corporations and Other Business Enterprises, para. 24–27, delivered to the Comm'n on Human Rights, U.N. Doc. E/CN.4/2006/97 (Feb. 22, 2006) (prepared by John Ruggie) [hereinafter Interim Report of the Special Representative]. The Special Representative of the Secretary-General surveyed 65 instances of abuses reported by NGOs in 27 countries. Ibid. at 27.
[11] Summary Report on Geneva Consultation, Geneva, Switz., Dec. 4–5, 2007, Corporate Responsibility to Respect Human Rights, at 2, http://www.reports-and-materials.org/Ruggie-Geneva-4-5-Dec-2007.pdf (last visited 15 January 2009).

Organization could serve as a point of departure for binding human rights obligations of corporations. This article further argues that given the current lack of a legally binding international document on human rights obligations, the focus on work towards legally-enforceable, existing international standards must be sharpened and new standards should be drafted.

## II. The Tripartite Declaration of Principles Concerning Multinational Enterprises and Fundamental Human Rights

This article argues that the International Labor Organization's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy offers an evidence of emerging human rights obligations of corporations at the international level. In other words, the Tripartite Declaration is one the major international instruments in relation to corporate responsibility for human rights. The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy was negotiated between Workers and Employers Organizations and Governments adopted by the Governing body of the International Labour Office on 16 November 1977,[12] and amended in November 2000[13] and in March 2006.[14] The Preamble of the Declaration notes that "[m]ultinational enterprises can . . . make an important contribution . . . to the enjoyment of basic human rights"[15]. Undoubtedly, the language of this provision denotes that the fundamental human rights are placed in the foreground of Declaration's aims. The Tripartite Declaration is often described as a set of principles and recommendations, which governments, employers' and workers' organizations, and multinational enterprises "are recommended to observe on [a] voluntary basis"[16]. The Declaration has therefore a wide reach, as it applies not only to corporations, but also to States and employers' and workers organizations. These guidelines are to be implemented within the ILO member states.

The Tripartite Declaration often addresses not only multinationals but also national enterprises specifically and it states that there is no need for precise definition of MNEs.[17] Principles encourage governments, multinationals, and national enterprises, alike, in adopting social policies and good practices. The Declaration encourages "the positive contribution which multinational enterprises can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise"[18]. Although the Declaration as an array of principles is to be observed on a voluntary basis, it may be described as an authoritative

[12] ILO, Tripartite Declaration of Principles concerning Concerning Multinational Enterprises and Social Policy, ILO Doc. 28197701, OB Vol. LXI, 1978, ser. A, no. 1 (1977).
[13] ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, (3d ed. 2001), http://www.ilo.org/public/english/employment/multi/download/english.pdf (last visited 10 July 2008).
[14] ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, (4th ed. 2006), http://www.ilo.org/public/english/employment/multi/download/declaration2006.pdf (last visited July 10, 2008) [hereinafter 2006 Tripartite Declaration].
[15] Ibid. At 1.
[16] Ibid. 7.
[17] Ibid. 6.
[18] Ibid. 2.

interpretation of some of the International Labour Conventions and Recommendations on which it is based. Rather than to concentrate on the fact that the principles are recommended on a voluntary basis, it is necessary to examine first how they are linked to binding obligations and, secondly to critically assess and consider methods developed by the ILO for their implementation.

**A. Contents of Tripartite Declaration**

The first paragraph of the Declaration, dealing with general policies, states that "[a]ll the parties . . . should contribute to the realization of the ILO Declaration on Fundamental Principles and Rights and Work and its Follow-up, adopted in 1998."[19] In other words, the ILO Declaration refers to the fact that these principles and rights "have been expressed and developed in the form of specific rights and obligations in [ILO] Conventions recognized as fundamental [labour rights]."[20] In this way, the Declaration on Fundamental principles and rights at work includes under fundamental labour rights the following rights: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect to employment and occupation.[21] In this light, focus is on the generally formulated principles, rather than on specific rights.[22]

Addendum II to the Tripartite Declaration suggests that corporations' contribution to implementation of the ILO Declaration on Fundamental Principles and Rights at Work "can prove an important element in the attainment of its objectives."[23] This denotes that ILO Declaration on Fundamental Principles and Rights at Work applies also to corporations. In a similar vein, it suggests that "[a]ll the parties concerned by this Declaration . . . should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations".[24]

[19] Ibid. 8.
[20] Principles & Rights at Work, supra note 49, ¶ 1(b).
[21] Ibid. 2. Eight ILO Conventions underline the four core labor standards: Freedom of Association and Protection of the Right to Organize, Convention, 1948 (No. 87), Right to Organize and Collective Bargaining Convention, 1949, 50(No. 98), Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105), Equality Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Equal Remuneration Convention, 1951 (No. 100), The Elimination of Child Labour Minimum Age Convention, 1973, (No. 138), Worst Forms of Child Labour Convention, 1999 (No. 182).
[22] For a critique of this approach see Philip Alston, "Core Labour Standards" and the Transformation of International Labour Rights Regime, 15 European Journal of International Law 457 (2004). For response, see Francis Maupain, Revitalization Not Retreat: The Real Potential of the 1998 ILO Declaration for the Universal Protection of Workers' Rights, 16 European Journal of International Law 439 (2005); Philip Alston, Facing Up to the Complexities of the ILO's Core Labour Standards Agenda, 16 European Journal of International Law 467 (2005).
[23] 2006 Tripartite Declaration, supra note 119, at Addendum II.
[24] Ibid. 8.

The Tripartite declaration suggests that corporations should not employ child labour[25] or block the organization of labour,[26] for the purpose of collective bargaining.[27] The Tripartite declaration further suggests that state governments should promote equality and eliminate discrimination,[28] making qualifications, skill and experience the basis for the recruitment, placement, training and advancement of their staff at all levels.[29]

All in all, it appears that the Tripartite declaration includes a number of fundamental human rights. However, a number of fatal flaws render its widespread application in most national legal orders highly improbable. It appears that no systemic safeguards ensure that individuals could avail themselves of their rights. This can be ascribed to the problem of due process, the ability of individuals to bring complaints and the overall weakness of the enforcement system under the ILO Declaration.

The Declaration in some parts reflects binding obligations, where corporations are already bound to respect certain legal obligations under national law from other international documents, and their inclusion is therefore declaratory and a reminder of those existing obligations.[30] In other words, a majority of national legal orders already include protections of fundamental labour rights. In addition, a number of corporations include commitment to observe fundamental labour rights in their internal human rights policies. The Tripartite Declaration notes that all the parties concerned by the Declaration should obey national laws, respect international standards, honour voluntary commitments, and harmonize their operations with the social aims and structure of countries in which they operate.[31] The Tripartite Declaration addresses work conditions, discrimination, free association of workers and adequate wages. All in all, the redundancy with existing legal obligations imposed on corporations is one aspect of the Declaration making its widespread adoption unlikely and unattractive to national governments. In the next section implementation mechanisms under the Tripartite declaration will be expounded.

## B. Implementing the Tripartite Declaration

Having briefly discussed the contents of the Tripartite declaration, this section turns to the analysis of the implementation procedures under the Declaration. The Tripartite Declaration has three different implementation procedures, which vary in aim and efficiency and they are described and examined in the following subsections. First, this section turns to the functioning of the Subcommittee on Multinational Enterprises.

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[25] Ibid. 36.
[26] Ibid. 42.
[27] Ibid. 49.
[28] Ibid. 21.
[29] Ibid. 22.
[30] *See* Ian Brownlie, Legal Effects of Codes of Conduct for MNEs: Commentary, in Legal Problems of Codes of Conduct for Multinational Enterprises 39, 41 (Norbert Horn ed., 1980).
[31] *2006 Tripartite Declaration*, *supra* note 14, 8.

*Subcommittee on Multinational Enterprises*

The ILO Subcommittee on Multinational Enterprises has two main functions: "to conduct periodic surveys on the effect given to the . . . Declaration" and "to consider requests for the interpretation of the provisions of the . . . Declaration."[32] This section first examines consideration of periodic surveys provided by member states and national employers' and workers' organizations on the implementation of the Tripartite Declaration.

*Consideration of periodic reports*

The parties (state government, employers' and workers' organizations) are asked to use surveys to request data and reports from corporations in order to draw better conclusions, examine policies and measures, and to give effect to suggestions and changes. These responses are gathered, analysed and synthesized, and thereafter submitted in a survey to the ILO governing body.[33] It appears that these surveys tell very little about any concrete failure by the corporation to respect the rights of workers.[34] For example, the names of corporations are omitted in summary reports on survey results.[35] This was the case in the summary of survey results from the *National Confederation of Dominican Workers (CNTD)*:

> CNTD further reports that participation by MNEs (names of MNEs not given) in what were state industries but have now been privatized or deregulated has created labour problems. Unions were closed down before privatization (names of cases in utilities sector not given), or liquidated after privatization (name of MNE and cases in agricultural manufacturing not given).[36]

The confidentiality these redactions provide in ILO Subcommittee reports diverges from the increasing interest in transparency on the part of governments as well as to employers and workers and their respective organizations. What is the purpose of having implementation mechanisms if the name of the corporation complained against must remain confidential? This leads to a situation where implementation mechanisms are potentially stripped of the rationale for existence. Interests of parties who brought the request are similarly compromised. The national surveys appear pointless since most of the summaries and responses praise the efforts of specific

[32] ILO, Governing Body - Subcommittee on Multinational Enterprises, http://www.ilo.org/public/english/employment/multi/tripartite/governingbody.htm (last visited 31 December 2008).
[33] Andrew Clapham, Human Rights Obligations of Non-State Actors, 216 (2006).
[34] Ibid.
[35] Ibid.
[36] ILO, Sub-Comm. on Multinational Enter., Follow-up on and Promotion of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy: (b) Seventh Survey on the effect given to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy: Summary of reports submitted by governments and by employers' and workers' organizations (Part II), 347, ILO Doc. GB.280/MNE/1/2 (March 2001) [hereinafter Seventh Survey]. See also Clapham, at 216.

multinationals and often thank them for their efforts with regard to human rights and working conditions. The analytical report then continues to praise the efforts of multinationals. Consider the following, "[m]any respondents stated that MNEs respected national laws on health and safety in the same way as domestic enterprises. A large number also reported that MNEs maintained the highest standards of safety and health."[37]

It appears that the current implementation system of periodic reporting does not support corporate responsibility, but rather undermines efforts to make corporations to small extent accountable. However, a number of responses were also critical of one multinational corporation without specifying it by name. "While most respondents stated that there were no limitations on the ability of workers or their representatives to exercise the right to freedom of association and collective bargaining, some reported that limitations did exist. Respondents that reported such limitations were mostly workers' organizations."[38]

Overall, the current state of the implementation of the Tripartite declaration undercuts the credibility of the process. It appears that the mechanisms of periodic reports must be strengthened to achieve full implementation of the Tripartite Declaration.

*Interpretation procedure of Tripartite Declaration*

This section examines interpretation procedure of the Tripartite declaration. It must be noted here that Tripartite declaration provides in section 58 that "any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure."[39]

In addition to providing periodic surveys, the Subcommittee on Multinational Enterprises delivers interpretative opinions based on specific requests for clarification. The request must be "arising from an actual situation, between parties to whom the Declaration is commended."[40] The Subcommittee receives each request for clarification (complaints) and, depending on approval from the Officers of the Subcommittee, will issue and publish a corresponding interpretation. Workers' and employers' organisations can make direct requests for clarification. Since adoption of the Tripartite Declaration and its Procedure, the ILO has been sent several requests for clarification alleging violations by multinational enterprises.[41]

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[37] Seventh Survey, supra note 36. at 70.
[38] Ibid. at 71.
[39] 2006 Tripartite Declaration, supra note 14, 58.
[40] ILO, Procedure for the Examination of Disputes Concerning the Application of the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy by Means of Interpretation of Its Provisions, 1, 196–97, OB Vol. LXIX, 1986, Ser. A, No. 3 (1986) [hereinafter Examination of Disputes].
[41] ILO, Multinational Enterprises and Social Policy - Interpretation Procedure at Work, http://www.ilo.org/public/english/employment/multi/tripartite/cases.htm (last visited 10 July 2008) [hereinafter Interpretation Procedure].

The nature of this interpretation procedure is very limited since it cannot be invoked to challenge violations of national law, international labour conventions and recommendations, or matters falling under the freedom of association procedure.[42] However, this also suggests that there is no requirement to exhaust all domestic remedies prior submitting request for the interpretation. According to P. Muchilinski, "the procedure may involve the ascertainment of certain facts and laws."[43] Some Communications to the ILO office that do not request an interpretation of provisions of the Declaration to resolve a disagreement on their meaning arising from an actual situation reported, "have been . . . handled outside the scope of the Procedure for interpretation of the . . . Tripartite Declaration."[44] The ILO webpage notes "[t]hey are either handled directly by the Bureau or referred elsewhere in the International Labour Office for appropriate action."[45] It, however, does not explain what "appropriate action" denotes.

The Governing Body has so far delivered decisions in five cases. Two were submitted by a government, and three by international organizations of workers on behalf of representative national affiliates. Four of the cases were found admissible, two unanimously[46] and the other two by majority decisions.[47] The fifth case was declared inadmissible,[48] and did not reach the interpretation stage. In the four receivable cases, substantive declarations have been issued relying on paragraphs 1-7, 8, 10, 25, 26 and 52 (formerly 51) of the Tripartite Declaration.

The International Labour Organisation takes the approach that monitoring bodies do not function as judicial or quasi-judicial mechanisms but confine themselves to clarifying the interpretation of the instruments. In this regard, the ILO Governing Body cannot deliver decisions "on infringements of the Declaration, to grant relief to victims of the infringements, or shame the perpetrators of the infringement [of the Declaration]."[49] As a result, some commentators consider the ILO Tripartite Declaration to be a failure. There are very legitimate reasons for enforcing responsibility of corporations for violations of the Tripartite Declaration. At the very least, the Tripartite declaration should provide for a complaints system similar to the OECD NCPs. However, it does not seem likely that many states will want to approve such extension of the Declaration, and victims are left with a patchwork of international ILO framework which produces inconsistent and conflicting results.

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[42] Examination of Disputes, supra note 40, 2.
[43] Peter T. Muchlinski, Multinational Enterprises and the Law 459 (1995).
[44] Interpretation Procedure, supra note 41.
[45] Ibid.
[46] Ibid. BIFU Case, paras. 7-10, ILO Doc. GB. 229/13/13 Appendix (1984-85) and Belgian Case No. 1, paras. 6-8, ILO Doc. GB.239/14/24/Appendix (1993-95).
[47] Ibid. ICEF case, paras. 1-3, ILO Doc. GB.264/13 (1993-95) and Belgian Case No.2, paras. 26, ILO Doc. GB.270/MNE/1 confidential (1997-98).
[48] Ibid. IUF Case, ILO Doc. GB.255/10/12 (1992).
[49] International network for economic, social, and cultural rights (Escr-net), Steps Toward Corporate Accountability for Human Rights: Escr-net report to Ohchr on the Human Rights Responsibilities of business (13 September 2004),
http://www.corporate-accountability.org/eng/documents/2004/steps_toward_corporate-accountability_for human_rights.pdf.

*Promotion and studies*

The third implementation mechanism provided for by the Declaration is studies and promotion efforts. It appears that the Declaration is still unknown in many countries and several institutions have reported that they are unqualified to report on its implementation. The most recent survey on the effect given to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy includes the reports received by the ILO Office from only 62 countries,[50] whereas for the previous (Seventh) survey, the Office received "reports from 169 respondents in 100 countries: tripartite partners in ten countries, 65 governments, employers' organizations in 29 countries, and workers' organizations in 45 countries."[51] This low number of survey respondents may reflect a lack of awareness of Declaration.

More concerted efforts are required to publicize the Declaration, especially to employers and employee organizations. This could be achieved through conferences, workshops and other promotional activities.

**C. Critical assessment of ILO Declaration of Principles on Multinational Enterprises**

This section argues that the Tripartite Declaration has value as an interpretative tool. It can be argued that the Tripartite Declaration illustrates and gives support to emerging international legal obligations of corporations. In this light, A. Clapham argues that 'despite the fact that the Tripartite Declaration contains only recommendations, the Declaration provides material evidence that the international labour law regime has come to include human rights obligations for national and multinational enterprises.'[52] Such observation appears, however, slightly far-fetched. It seems more plausible an argument that fundamental labour rights obligations of corporations derive primarily from national legal orders and secondarily from international level. It would be more feasible to submit that the Tripartite Declaration offers an additional and supplementary legal source of fundamental labour obligations of corporations.

It appears that the one of the Tripartite Declaration's strengths lies in its universal application. However, the fact remains that many cases against corporations appear beyond the reach of the ILO and its organs. Nonetheless, the Declaration's limited capacity should not imply that the ILO can absolve itself from the obligation to ensure the implementation of the Declaration and

[50] ILO, Sub-Comm. on Multinational Enter., Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy:
(b) Eighth Survey on the effect given to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy: Summary of reports, submitted by governments and by employers' and workers' organizations (Part II), 1, ILO Doc. GB.294/MNE/1/2 (Nov. 2005).
[51] Seventh Survey, supra note 36, 23.
[52] Clapham, *supra* note 33, at 215. The author further suggests that "even though the [core ILO] Conventions might be seen as primarily addressed to states, their impact reaches well beyond those states that can become contracting parties. As companies increasingly come within the reach of these Conventions, it will not be enough simply to avoid conduct that violates their terms. Positive obligations also accrue." *Ibid.*

to investigate violations and provide redress. And yet, the Tripartite Declaration has not been employed to the fullest extent possible in the respective national legal orders. Particularly, the interpretation procedure has been underemployed. By all accounts, it appears that "[t]he effect of this mechanism is also significantly undermined by the fact that it does not include a mandate to hold a party responsible for violating the Declaration's principles."[53] In this way, the analysis and periodic survey reports have, at times, resulted in the praising of the multinational corporations and absence of any criticism of corporate conduct. In this light, it is suggested that the human rights impact assessment of corporate activities should be included in the periodical reports on the Declaration's implementation.

All in all, the Tripartite declaration has not gained a foothold as an useful tool for enforcing human rights violations by or involving corporations. With more concentration on fundamental labour rights as minimum standards for corporate responsibility, the Tripartite Declaration may gain traction and it could be gradually included in contracts, tenders, codes of conduct and collective bargaining agreements. Even if corporations are not legally bound by the Declaration, however, reference to it in private agreements would suggest consensus that ILO fundamental labour standards should be respected by the multinational enterprises.

## III. CONCLUSION

From this analysis of the Tripartite Declaration, it becomes clear that a number of different avenues are being pursued in an attempt to achieve better protection of human rights. In spite of these attempts, however, the combining of business principles with norms of human rights is not entirely problem free. In the absence of binding international obligations, it appears that "the growing power of transnational corporations and their extension of power through privatization, deregulation and the rolling back of the State also mean that it is now time to develop binding legal norms that hold corporations to human rights standards and circumscribe potential abuses of their position of power."[54] All in all, it seems that these questions expose the stark reality of the need for more clarity in identifying human rights obligations of corporations. Notwithstanding the fact that the current legal framework is unsatisfactory, it is hard to construe a remedy.

It is important to note here that although the international documents such as the ILO Tripartite Declaration are generally not legally binding instruments, they contain principles and rights that are based on human rights standards enshrined in other legally binding international documents. The Tripartite Declaration does refer to human rights obligations of corporations; however, it

[53] Steps toward Corporate Accountability for Human Rights: ESCR-Net Report to OHCHR on the Human Rights Responsibilities of Business, International Network for Economic, Social & Cultural Rights, September 2004, <http://www2.ohchr.org/english/issues/globalization/business/docs/escrnet2.doc>.

[53] *Ibid.* at 13.

[54] UN News Centre, Transnational corporations should be held to human rights standards - UN expert (Oct. 13, 2003), http://www.un.org/apps/news/story.asp?NewsID=8536&Cr=right&Cr1=food (last visited 14 December 2008).

appears that States or corporations do not consider such obligations as legally binding. It appears that the role of the Tripartite Declaration must be qualified in relation to the existing legal, regulatory or administrative procedures of the host countries. Effective procedures and mechanisms of international review must be established to screen every alleged fundamental human rights violation by corporations and to ensure accountability in cases of abuse.

Under the current normative framework, the best effective protection for human rights in relation to corporate conduct is for victims to rely on civil and criminal remedies in national legal orders. It appears that obligations of corporations for protection of fundamental human rights under ILO framework need to be framed in more direct and mandatory terms. Perhaps a creative tapestry of international legally binding regulations would be an appropriate option. That will certainly not be an easy task, but a long and complex process is to be preferred over simply ignoring the problem.

Though the Tripartite Declaration employs indirect methods of enforcement concerning corporate obligations, it has become clear that international initiatives have thus far failed to establish a coherent standard for identifying corporate human rights obligations. And yet, calls for the establishment of a World Court for Human Rights to hear claims against corporations are controversial and highly unlikely to yield results, due to the current *real politik* of world powers. Therefore, enforcing the Tripartite Declaration is a necessary step for regulation of multinational enterprises in the international arena. The international human rights regime should offer a clear set of minimum standards on human rights obligations of corporations, and corporations and national legal systems should have to comply with and be a fortiori encouraged to exceed minimum standards.